

No. 272

AN ACT

HB 1924

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, changing provisions relating to retail theft; and providing for certain fingerprinting.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

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Section 1. Section 3929 of Title 18, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, added December 6, 1972 (P.L.1482, No.334), is amended to read:

§ 3929. Retail theft.

(a) Offense defined.—A person is guilty of a retail theft if he:

(1) takes possession of, *carries away, transfers or causes to be carried away or transferred*, any merchandise *displayed, held, stored or* offered for sale by any store or other retail mercantile establishment with the intention of [converting it to his own use] *depriving the merchant of the possession, use or benefit of such merchandise* without paying [to the owner] the *full retail* value thereof; [or]

(2) alters, transfers or removes any label, price tag [or marking upon any merchandise offered for sale by any store or other retail mercantile establishment; or] *marking, indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale in a store or other retail mercantile establishment and attempts to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of the full retail value of such merchandise;*

(3) transfers any merchandise *displayed, held, stored or* offered for sale by any store or other retail mercantile establishment from the container in or on which the same shall be displayed to any other container with intent to deprive the [owner] *merchant* of all or some part of the *full retail* value thereof; *or*

(4) *under-rings with the intention of depriving the merchant of the full retail value of the merchandise.*

(b) Grading.—

[1] Any person committing the first offense of retail theft when the value of the merchandise is less than \$100 is guilty of a summary offense.

(2) Upon conviction of a second offense when the value of the merchandise is less than \$100 the person shall be guilty of a misdemeanor of the second degree.

(3) Upon commission of a third or any subsequent offense, regardless of the value of the merchandise, the person shall be guilty of a misdemeanor of the first degree.

(4) When the value of the merchandise shall be \$100 or more, any person who shall commit the offense of retail theft whether same shall be a first or subsequent offense, shall be guilty of a misdemeanor of the first degree.]

(1) *Retail theft constitutes a:*

(i) *Summary offense when the offense is a first offense and the value of the merchandise is less than \$150.*

(ii) *Misdemeanor of the second degree when the offense is a second offense and the value of the merchandise is less than \$150.*

(iii) *Misdemeanor of the first degree when the offense is a first or second offense and the value of the merchandise is \$150 or more.*

(iv) *Felony of the third degree when the offense is a third or subsequent offense, regardless of the value of the merchandise.*

(2) *Amounts involved in retail thefts committed pursuant to one scheme or course of conduct, whether from the same store or retail mercantile establishment or several stores or retail mercantile establishments, may be aggregated in determining the grade of the offense.*

(c) Presumptions.—Any person intentionally concealing unpurchased property of any store or other mercantile establishment, either on the premises or outside the premises of such store, shall be prima facie presumed to have so concealed such property with the intention of [converting it to his own use] *depriving the merchant of the possession, use or benefit of such merchandise* without paying the [purchase price] *full retail value* thereof within the meaning of subsection (a), and the finding of such unpurchased property concealed, upon the person or among the belongings of such person, shall be prima facie evidence of intentional concealment, and, if such person conceals, or causes to be concealed, such unpurchased property, upon the person or among the belongings of another, such fact shall also be prima facie evidence of intentional concealment on the part of the person so concealing such property.

(c.1) *Evidence.—To the extent that there is other competent evidence to substantiate the offense, the conviction shall not be avoided because the prosecution cannot produce the stolen merchandise.*

(d) Detention.—A peace officer, merchant or merchant's employee or an agent under contract with a merchant, who has probable cause to believe that retail theft has occurred or is occurring on or about a store or other retail mercantile establishment and who has probable cause to believe that a specific person has committed or is committing the retail theft may detain the suspect in a reasonable manner for a reasonable time on or off the premises for all or any of the following purposes: to require the suspect to identify himself, to verify such identification, to determine whether such suspect has in his possession unpurchased merchandise taken from the mercantile establishment and, if so, to recover such merchandise, to inform a peace officer, or to institute criminal proceedings against the suspect. Such detention shall not impose civil or criminal liability upon the peace officer, merchant, employee, or agent so detaining.

(e) Reduction prohibited.—No justice of the peace or other magistrate shall have the power to reduce any other charge of theft to a charge of retail theft as defined in this section.

(f) Definitions.—

“Conceal.” *To conceal merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation.*

“Full retail value.” *The merchant’s stated or advertised price of the merchandise.*

[(1) **“Store or other retail mercantile establishment.”** *A place where merchandise is sold or offered to the public for sale.*

(2)] **“Merchandise.”** *Any goods, chattels, foodstuffs or wares of any type and description, regardless of the value thereof.*

“Merchant.” *An owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of such owner or operator.*

“Premises of a retail mercantile establishment.” *Includes but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment.*

“Store or other retail mercantile establishment.” *A place where merchandise is displayed, held, stored or sold or offered to the public for sale.*

“Under-ring.” *To cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.*

(g) **Fingerprinting.**—*Prior to the commencement of trial or entry of plea of a defendant 16 years of age or older accused of the summary offense of retail theft, the issuing authority shall order the defendant to submit within five days of such order for fingerprinting by the municipal police of the jurisdiction in which the offense allegedly was committed or the State Police. Fingerprints so obtained shall be forwarded immediately to the Pennsylvania State Police for determination as to whether or not the defendant previously has been convicted of the offense of retail theft. The results of such determination shall be forwarded to the Police Department obtaining the fingerprints if such department is the prosecutor, or to the issuing authority if the prosecutor is other than a police officer. The issuing authority shall not proceed with the trial or plea in summary cases until in receipt of the determination made by the State Police. The district justice shall use the information obtained solely for the purpose of grading the offense pursuant to subsection (b). If the defendant is convicted of retail theft, the district justice shall forward the docket transcript to the State Police.*

Section 2. The provisions of this act shall not affect any act done, liability incurred or right accrued or vested, or affect any suit or prosecution pending or to be instituted to enforce any right or penalty or punish any offense under the authority of any act or part thereof repealed in this act.

Section 3. This act shall take effect immediately.

APPROVED—The 2nd day of December, A. D. 1976.

MILTON J. SHAPP